IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 425 of 2004

LICHMA & ANR
V/S
MANGILAL & ORS

Mr. VIJAY AGARWAL, for the appellants

Date of Order : 7.2.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellants.

Both the learned courts below dismissed the plaintiff's suit for declaration of sale-deeds dated 20.2.1995 and 23.5.95 to be forged, void and in-effective. The sale-deeds are said to have been executed by deceased Gopal Ram, father and maternal grand-father of plaintiff-appellant. As appears from the impugned Judgments, that the sale-deeds were sought to be assailed by taking hotch-potch pleadings, like documents being without consideration, as the sale price was not paid to Gopal Ram, conspiracy was hatched and pursuant thereto, sale-deeds were got registered, and as a part of conspiracy, signatures of Gopal Ram were obtained dishonestly, and that Gopal Ram had no legal necessity to alienate the property, inter alia with this, it is pleaded that the document is forged one, outcome of conspiracy. The learned trial court in regard to validity of sale-deeds, has framed issue no.1, being comprehensive one as to whether sale-deed is forged, false, illegal and void, and issue no.2 related to passing of consideration. The other issues are need not to be discussed, as nothing turns on them and findings on them are not assailed.

From a reading of plaint, it was sought to be contended that the sale-deeds were without any legal necessity, and on the basis of statement of appellant Lichma, it was also sought to be contended that appellant had clearly deposed that deceased had no legal necessity, but then this aspect of the matter has not been considered by the learned

trial court.

I have considered the submission, and find that, may be that trial court has not considered this aspect of the matter, but then a look at para no.12 of the Appellate Court's judgment shows that even before the learned Lower Appellate Court, this question was never raised on the side of appellant that sale-deeds were without legal necessity and/or the trial court has not discussed the same. Thus this contention cannot be allowed to be raised in second appeal.

The next arguments raised before me was, on the aspect that it cannot be believed from the evidence on record that, sale price was paid to Gopal Ram, inasmuch as, evidence led by defendants in this regard is seriously contradictory, and since it has not been established that cash consideration ever passed to the deceased, necessary inference is that, the sale-deeds were without legal necessity. In my view, the learned courts below have positively found that it has not been established that consideration did not pass. The findings are based on appreciation of evidence, and it is not open to me to re-appreciate the evidence as a trial court, and come to different conclusion. Learned counsel for the appellant has not pointed out any non-reading or mis-reading of any evidence.

Other submission made was that, it has come in evidence of defendants that document is in the hand of Jagram, while document is typed one, and Jagram has not been examined. It shows that document is suspicious one.

This argument also cannot be accepted for the simple reason that it is not the case of the appellant that Gopal Ram did not sign the sale-deeds, or that it was not registered, or what is the conspiracy hatched & how the signatures of Gopal Ram were obtained, and under what circumstances, he was made to sign, all these things have not been pleaded nor established. In that view of the matter, nothing turns, on

the aspect as to whether document is typed or scribed by Jagram. It is significant to note that both the learned courts below have noticed that after the death of Gopal Ram, there had been criminal litigation also, and there had been compromise also between the parties, being Ex.A/1 and Ex.A/2, which is on the stamp, and the stamp thereof has been purchased by the husband appellant Lichma, and in that compromise, it has been agreed that there is no dispute surviving between the parties, and that the plaintiff does not want to initiate any proceedings against any other party any more. The plaintiff has not been able to controvert these documents.

In these circumstances, I do not find any substantial question of law to be arising in this appeal. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Srawat/